



Patent
Attorney's Docket No. COS01007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) **Mail Stop APPEAL BRIEF - PATENTS**
Shawn WIEDERIN)
Application No.: 09/950,025) Group Art Unit: 3621
Filed: September 12, 2001) Examiner: M. Cheung
For: SYSTEMS AND METHODS FOR)
MONETARY TRANSACTIONS)
BETWEEN WIRED AND WIRELESS)
DEVICES)

TRANSMITTAL FOR APPEAL BRIEF

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is an Appeal Brief in support of the Notice of Appeal filed
November 4, 2005 and further in view of the Office Communication dated December 6, 2005.

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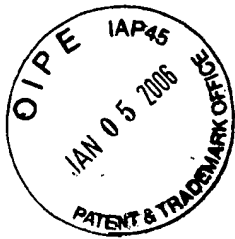
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PATENT
Docket No. COS01007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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APPEAL BRIEF

This Appeal Brief is submitted in response to the final Office Action, dated August 5, 2005, and in support of the Notice of Appeal, filed November 4, 2005.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is MCI, Inc.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

Appellant is unaware of any related appeals, interferences or judicial proceedings.

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III. STATUS OF CLAIMS

Claims 2-6, 8, 9, 12-16, 18, 19, 22-26, 28, 29, 32-36, 38, 39, and 41-45 are pending in this application. Claims 2-6, 8, 9, 12-16, 18, 19, 22-26, 28, 29, 32-36, 38, 39, and 41-45 were finally rejected in the Office Action, dated August 5, 2005, and are the subject of the present appeal. These claims are reproduced in the Claim Appendix of this Appeal Brief.

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In the paragraphs that follow, each of the independent claims that is involved in this appeal and each dependent claim that is argued separately that is in means plus function or step plus function format will be recited followed in parenthesis by examples of where support can be found in the specification and drawings.

Claim 42 recites a monetary transaction system comprising a payment processing system configured to receive payee, user, and amount information from a wireless device associated with the user (e.g., Fig. 1; paragraph 0018, paragraphs 0022-0023 and 0030-0032), identify a first account associated with the user based on the user information (e.g., paragraph 0027), identify a second account associated with the payee based on the payee information (e.g., paragraph 0028), transfer funds based on the amount information between the first account and the second account (e.g., paragraph 0028), and send a notification of the transfer of the funds to the wireless device (e.g., paragraph 0028), the notification including an itemization of goods or services associated

with the transfer (e.g., paragraph 0028).

Claim 43 recites a method for performing a monetary transaction, comprising receiving payee, user, and amount information from a wireless device associated with a user (e.g., paragraphs 0022-0023); identifying a first account associated with the user based on the user information (e.g., paragraph 0027); prompting a payee device associated with the payee, for information relating to a second account associated with the payee based on the payee information (e.g., paragraph 0027); and transferring funds based on the amount information between the first account and the second account (e.g., paragraph 0028).

Claim 44 recites a computer-readable medium containing instructions for controlling at least one processor (e.g., payment processing system 500, paragraph 0023) to perform a method for conducting a monetary transaction, the method comprising receiving transaction information from a wireless device, the wireless device being associated with a user, wherein the transaction information includes at least payee, user, and amount information (e.g., paragraphs 0022-0023); identifying a first account associated with the user based on the transaction information (e.g., paragraph 0027); prompting a payee device associated with the payee, for information relating to a second account associated with the payee based on the transaction information (e.g., paragraph 0027); and transferring funds based on the transaction information between the first account and the second account (e.g., paragraph 0028).

Claim 45 recites a network device (e.g., 500) comprising a first component (e.g., 510) configured to receive monetary transaction information from a device (e.g., 200), the monetary transaction information including at least payee, user, and amount information (e.g., paragraphs 0022-0023); a second component (e.g., 540) configured to identify a first account associated with

a payer and a second account associated with a payee based on the received monetary transaction information (e.g., paragraph 0027); a third component (e.g., 580) configured to transfer funds between the first account and the second account (e.g., paragraph 0028); and a fourth component (e.g., 580) configured to notify a wireless device associated with the payer of the transfer of funds, the notification including an itemization of goods or services associated with the transfer (e.g., paragraph 0028).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 12-16, 18, 19, 22-26, 28, 29, 43 and 44 stand rejected under 35 U.S.C. § 102(e) as being anticipated by SHKEDY (U.S. Patent No. 6,260,024).

B. Claims 2-6, 8, 9, 32-36, 38, 39, 41, 42, and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over SHKEDY (U.S. Patent No. 6,260,024).

VII. ARGUMENTS

A. **The rejection under 35 U.S.C. § 102(e) based on SHKEDY (U.S. Patent No. 6,260,024) should be reversed.**

1. Claims 43 and 44.

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). A proper rejection under 35 U.S.C. § 102 requires that a single reference teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 2

USPQ2d 1051 (Fed. Cir. 1987).

Appellant's claim 43 is directed a method for performing a monetary transaction. The method includes receiving payee, user, and amount information from a wireless device associated with a user, identifying a first account associated with the user based on the user information, prompting a payee device associated with the payee, for information relating to a second account associated with the payee based on the payee information, and transferring funds based on the amount information between the first account and the second account. Appellant respectfully submits that SHKEDY does not disclose the combination of features recited in Appellant's claim 43.

For example, SHKEDY does not disclose receiving *payee information* from a wireless device associated with a user, as recited in claim 43. In the final Office Action, the Examiner relied on col. 5, lines 2-35, as well as col. 6, lines 40-47, 53-63, col. 8, lines 57-65, and col. 11, lines 21-24 of SHKEDY for allegedly disclosing the receipt of payee information by a monetary transaction system (final Office Action, pg. 3). Appellant respectfully maintains that these sections of SHKEDY do not disclose receiving *payee* information, as recited in claim 43.

At col. 5, lines 2-35, SHKEDY discloses:

Each of the plurality of buyers who wish to make purchase independently access the control controller 200 to create forward purchase orders (FPOs) to submit their purchase orders for items and/or services. The central controller 200 is preferably located at a remote server.

FIG. 2a illustrates the steps associated with the creation, transmission, and inclusion of an FPO 100 into the PPO database 265. At step 40, a buyer selects the category of goods or services to be purchased. At step 42, the buyer selects the particular item or service in the category. At step 44, the buyer adds a quantity specifier along with any other required buyer specified conditions. At step 46, a buyer will specify along with item, quantity, and buyer identification data, the pool date (i.e., seller bidding date) he wishes to participate

in and an outside delivery date. The pool date represents the specific date at which the central controller (intermediary) 200 will make the PPO available to the sellers for bidding. A buyer will typically have a choice of two or more pool dates from which to choose. He must, however, select only a single pool date into which is FPO 100 will be included. If his FPO comprises multiple categories of goods, he could, however, provide a single pool date per category.

At step 48, the buyer is prompted for possible additional items or services that he wishes to purchase. If so, steps 40-46 are repeated for each additional item or service to be purchased, otherwise at step 50, the buyer attaches his user identification to the FPO and transmits the FPO to the central controller 200.

A typical buyer created forward purchase order, FPO 100, could, for example, specify that the buyer wishes to purchase two dozen BIC medium point black roller ball pens and one dozen BIC medium point blue roller ball pens.

At col. 6, lines 40-63, SHKEDY discloses:

Under the present invention, communications between the various parties may be transmitted via numerous means including a world-wide-web interface, personal digital assistant (PDA), electronic mail, voice mail, facsimile, or postal mail. Other means not explicitly enumerated herein but known to one ordinarily skilled in the art are also within the scope of the invention.

In another embodiment, as a substitute for making the PPO database 265 globally available to a plurality of sellers, the central controller 200 could instead pro-actively contact potential sellers to explicitly request them to bid on the PPOs in the PPO database 265.

The central controller 200 manages the payment system between the buyer and seller automatically. Various methods of payment may be utilized by the invention including credit cards, personal checks, electronic funds transfer, debit card, money orders, corporate purchasing cards, smart cards, digital cash and micropayments. The payment system may also involve the use of an escrow account associated with the buyer wherein funds advanced by the buyer to cover the purchase of a desired good can be kept pending delivery of the goods by the selected seller 20. Moreover, the timing of payment to the seller can be varied.

At col. 8, lines 57-65, SHKEDY discloses:

As shown in FIG. 1, an apparatus of the present invention comprises seller interface 300, central controller 200, and buyer interface 400 (collectively the "nodes"). Each node is connected via an Internet connection using a public switched phone network, such as

those provided by a local or regional telephone operating company. Connection may also be provided by dedicated data lines, cellular, Personal Communication Systems ("PCS"), microwave, or satellite networks.

At col. 11, lines 21-24, SHKEDY discloses:

Network interface 245 is the gateway to communicate with buyers and sellers through respective buyer interface 400 and seller interface 300. Conventional internal or external modems may serve as network interface 245.

These sections of SHKEDY disclose the type of information submitted by buyers in creating forward purchase orders (FPO's) for bidding by potential sellers. These sections of SHKEDY also disclose the manner in which the information is received. Contrary to the Examiner's interpretation, these sections of SHKEDY clearly do not disclose receiving payee (or seller) information from a wireless device associated with the user. Rather, SHKEDY specifically indicates that the buyer is submitting an FPO for inclusion in a *bidding pool* which may then be bid upon by multiple potential sellers. The receipt of specific payee information from the buyer would eliminate the very benefits that the system of SHKEDY offers, i.e., the ability for buyers to create and submit purchase orders to an intermediary for presentation to multiple potential sellers. Therefore, SHKEDY can not be fairly construed to disclose or suggest receiving payee information from a wireless device, as required by claim 43.

Furthermore, the above-recited sections of SHKEDY further indicate that central controller 200 "manages the payment system between the buyer and the seller automatically" (see col. 6, lines 53-54). More specifically, the central controller 200 of SHKEDY may use an intermediary escrow account for transitioning funds between buyers and sellers. By facilitating payment through central controller 200, payee information is never required from the buyer. Clearly, the system of SHKEDY does not disclose receiving payee, user, and amount information

from a wireless device associated with the user, as recited in claim 43.

For at least the foregoing reasons, Appellant submits that the rejection of claims 43 and 44 under 35 U.S.C. § 102(e) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

2. Claims 12-16, 18, and 19.

As stated above, the initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Examiner.

Appellant respectfully submits that dependent claims 12-16, 18, and 19 are patentable over SHKEDY. Claims 12-16, 18, and 19 depend from claim 43. Therefore, these claims are not anticipated by SHKEDY for at least the reasons given above with respect to claim 43.

For at least the foregoing reasons, Appellant submits that the rejection of claims 12-16, 18, and 19 under 35 U.S.C. § 102(e) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

3. Claims 22-26, 28, and 29.

As stated above, the initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Examiner.

Appellant respectfully submits that dependent claims 22-26, 28, and 29 are patentable over SHKEDY. Claims 22-26, 28, and 29 depend from claim 44. Therefore, these claims are not anticipated by SHKEDY for at least the reasons given above with respect to claim 44.

For at least the foregoing reasons, Appellant submits that the rejection of claims 22-26, 28, and 29 under 35 U.S.C. § 102(e) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

B. The rejection under 35 U.S.C. § 103(a) based on SHKEDY (U.S. Patent No. 6,260,024) should be reversed.

1. Claims 42 and 45.

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the conclusion of obviousness. In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). Based upon the objective evidence of record, the Examiner is required to make the factual inquiries mandated by Graham v. John Deere Co., 86 S.Ct. 684, 383 U.S. 1, 148 USPQ 459 (1966). The Examiner is also required to explain how and why one having ordinary skill in the art would have been realistically motivated to modify an applied reference and/or combine applied references to arrive at the claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

In establishing the requisite motivation, it has been consistently held that the requisite motivation to support the conclusion of obviousness is not an abstract concept, but must stem from the prior art as a whole to impel one having ordinary skill in the art to modify a reference or to combine references with a reasonable expectation of successfully achieving some particular realistic objective. See, for example, Interconnect Planning Corp. v. Feil, 227 USPQ 543 (Fed. Cir. 1985). Consistent legal precedent admonishes against the indiscriminate combination of prior art references. Carella v. Starlight Archery, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir.

1985).

Appellant's claim 42 is directed toward a monetary transaction system comprising a payment processing system configured to receive payee, user, and amount information from a wireless device associated with the user, identify a first account associated with the user based on the user information, identify a second account associated with the payee based on the payee information, transfer funds based on the amount information between the first account and the second account, and send a notification of the transfer of the funds to the wireless device, the notification including an itemization of goods or services associated with the transfer. Appellant respectfully submits that SHKEDY does not disclose or suggest the combination of features recited in Appellant's claim 42.

For example, SHKEDY does not disclose a payment processing system configured to receive *payee information* from a wireless device associated with a user, as recited in claim 42. As in the above-discussed rejection of claim 43, the Examiner again relied on col. 5, lines 2-35, col. 6, lines 40-47, 53-63, col. 8, lines 57-65, and col. 11, lines 21-24 of SHKEDY for allegedly disclosing the receipt of payee information by a monetary transaction system (Office Action, pg. 5). Applicant respectfully submits that these sections of SHKEDY do not disclose or properly suggest receiving *payee* information, as recited in claim 42.

As discussed above, the cited section of SHKEDY discloses the type of information submitted by buyers in creating forward purchase orders (FPO's) for bidding by potential sellers. Once a bid has been accepted, payment between the buyer and the seller is managed by the central controller. Contrary to the Examiner's interpretation, the above sections of SHKEDY clearly do not disclose receiving *payee* (or *seller*) information **from a wireless device associated**

with a user. SHKEDY specifically indicates that the buyer is submitting an FPO for inclusion in a bidding pool which may then be bid upon by multiple potential sellers. Furthermore, although not specifically addressed in the Office Action, it would not have been obvious to modify the system of SHKEDY to include payee information in the FPO submission by the buyer. Rather, *the receipt of specific payee information from the user would run counter to the entire concept of the SHKEDY system*, that being a system that enables buyers to create and submit purchase orders to an intermediary for presentation to multiple potential sellers.

For at least the foregoing reasons, Appellant submits that the rejection of claims 42 and 45 under 35 U.S.C. § 103(a) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

2. Claims 2-6, 8, and 9.

As stated above, the initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Examiner.

Appellant respectfully submits that dependent claims 2-6, 8, and 9 are patentable over SHKEDY. Claims 2-6, 8, and 9 depend from claim 42. Therefore, these claims are not disclosed or suggested by SHKEDY for at least the reasons given above with respect to claim 42.

For at least the foregoing reasons, Appellant submits that the rejection of claims 2-6, 8, and 9 under 35 U.S.C. § 103(a) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

3. Claims 32-36, 38, 39, and 41.

As stated above, the initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Examiner.

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PATENT

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Appellant respectfully submits that dependent claims 32-36, 38, 39, and 41 are patentable over SHKEDY. Claims 32-36, 38, 39, and 41 depend from claim 45. Therefore, these claims are not disclosed or suggested by SHKEDY for at least the reasons given above with respect to claim 45.

For at least the foregoing reasons, Appellant submits that the rejection of claims 32-36, 38, 39, and 41 under 35 U.S.C. § 103(a) based on SHKEDY is improper. Accordingly, Appellant requests that the rejection be reversed.

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VIII. CONCLUSION

In view of the foregoing arguments, Appellant respectfully solicits the Honorable Board to reverse the Examiner's rejections of claims 1-31 under 35 U.S.C. §§ 102 and 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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IX. CLAIM APPENDIX

2. The system of claim 42, wherein the payment processing system includes a profile determination device that determines a user profile and a payee profile.

3. The system of claim 2, wherein the user profile comprises at least one of financial information, device information, security information, historical information, transaction information or authorized recipient information.

4. The system of claim 2, wherein the profile determination device determines a payee profile based on the on at least one of a look-up technique, identification information or another profile database.

5. The system of claim 42, wherein the payment processing system includes a transaction database that records information about the transfer of the funds.

6. The system of claim 42, wherein the wireless device includes at least one of a personal digital assistant (PDA), a cellular telephone, a wireless pager, a PC tablet, a television, a personal computer, a wireless e-mail device, a wireless telephone, an appliance, a refrigerator, a washing machine, or a distributed network access device.

8. The system of claim 42, wherein the user information comprises at least one of personal information about the user, a name, an age, an address, a city, a state, a phone, a fax, an

e-mail address or a wireless phone number.

9. The system of claim 42, wherein the payment processing system includes a security device that monitors passwords, encrypts information or monitors user information.

12. The method of claim 43, further comprising determining a user profile and a payee profile.

13. The method of claim 12, wherein the user profile comprises at least one of financial information, device information, security information, historical information, transaction information or authorized recipient information.

14. The method of claim 12, wherein the payee profile is based on the information relating to a second account associated with the payee.

15. The method of claim 43, further comprising recording information about the transfer of funds.

16. The method of claim 43, wherein the wireless device includes at least one of a personal digital assistant (PDA), a cellular telephone, a wireless pager, a PC tablet, a television, a personal computer, a wireless e-mail device, a wireless telephone, an appliance, a refrigerator, a washing machine, or a distributed network access device.

18. The method of claim 43, wherein the received user information comprises at least one of personal information about the user, a name, an age, an address, a city, a state, a phone, a fax, an e-mail address or a wireless phone number.

19. The method of claim 43, further comprising at least one of monitoring passwords, encrypting information and monitoring user information.

22. The computer-readable medium of claim 44, wherein the method further comprises determining a user profile and a payee profile.

23. The computer-readable medium of claim 22, wherein the user profile comprises at least one of financial information, device information, security information, historical information, transaction information or authorized recipient information.

24. The computer-readable medium of claim 22, wherein the payee profile is based on the information relating to a second account associated with the payee.

25. The computer-readable medium of claim 44, wherein the method further comprises recording information about the transfer of the funds.

26. The computer-readable medium of claim 44, wherein the wireless device includes

at least one of a personal digital assistant (PDA), a cellular telephone, a wireless pager, a PC tablet, a television, a personal computer, a wireless e-mail device, a wireless telephone, an appliance, a refrigerator, a washing machine, or a distributed network access device.

28. The computer-readable medium of claim 44, wherein the transaction information comprises at least one of personal information about the user, a name, an age, an address, a city, a state, a phone, a fax, an e-mail address or a wireless phone number.

29. The computer-readable medium of claim 44, wherein the method further comprises at least one of monitoring passwords, encrypting information or monitoring user information.

32. The network device of claim 45, further comprising a profile determination device that determines a payer profile and a payee profile.

33. The network device of claim 32, wherein the payer profile comprises at least one of financial information, device information, security information, historical information, transaction information or authorized recipient information.

34. The network device of claim 32, wherein the profile determination device determines a payee profile based on the information relating to a second account associated with the payee.

35. The network device of claim 45, further comprising a transaction database that records information about the transfer of the funds.

36. The network device of claim 45, wherein the device includes at least one of a household appliance, a television, a vending machine, a refrigerator, a washing machine, a heater, an air conditioner, or a refrigerator.

38. The network device of claim 45, wherein the monetary transaction information comprises at least one of personal information about the payer, a name, an age, an address, a city, a state, a phone, a fax, an e-mail address or a wireless phone number.

39. The network device of claim 45, further comprising a security device that monitors passwords, encrypts information or monitors payer information.

41. The network device of claim 45, wherein the monetary transaction information includes information identifying the device, and wherein the identification information comprises one or more of a serial number, an electronic number identifier or an IP address.

42. A monetary transaction system comprising:

a payment processing system configured to:

receive payee, user, and amount information from a wireless device

associated with the user,

identify a first account associated with the user based on the user

information,

identify a second account associated with the payee based on the payee

information,

transfer funds based on the amount information between the first account

and the second account, and

send a notification of the transfer of the funds to the wireless device, the

notification including an itemization of goods or services associated with the transfer.

43. A method for performing a monetary transaction, comprising:

receiving payee, user, and amount information from a wireless device associated

with a user;

identifying a first account associated with the user based on the user information;

prompting a payee device associated with the payee, for information relating to a

second account associated with the payee based on the payee information; and

transferring funds based on the amount information between the first account and

the second account.

44. A computer-readable medium containing instructions for controlling at least one

processor to perform a method for conducting a monetary transaction, the method comprising:

receiving transaction information from a wireless device, the wireless device

being associated with a user, wherein the transaction information includes at least payee, user, and amount information;

identifying a first account associated with the user based on the transaction information;

prompting a payee device associated with the payee, for information relating to a second account associated with the payee based on the transaction information; and

transferring funds based on the transaction information between the first account and the second account.

45. A network device comprising:

a first component configured to receive monetary transaction information from a device, the monetary transaction information including at least payee, user, and amount information;

a second component configured to identify a first account associated with a payer and a second account associated with a payee based on the received monetary transaction information;

a third component configured to transfer funds between the first account and the second account; and

a fourth component configured to notify a wireless device associated with the payer of the transfer of funds, the notification including an itemization of goods or services associated with the transfer.

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PATENT

Application No. 09/778,186
Docket No. **RIC98014P1**

X. EVIDENCE APPENDIX

None.

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PATENT

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XI. RELATED PROCEEDINGS APPENDIX

None.